STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 17, 2011

In the Matter of B. WELSH, Minor.

No. 303637
Mecosta Circuit Court
Family Division
LC No. 10-005595-NA

Before: WILDER, P.J., and HOEKSTRA and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(*i*), (g), and (k)(*ii*). For the reasons stated in this opinion, we affirm.

On June 3, 2010, a petition was filed seeking removal of respondent from the home and termination of his parental rights. The petition alleged, in pertinent parts, that respondent lived with the mother of the minor child and another minor, D.L., who was not respondent's biological child. The petition further alleged that respondent sexually penetrated D.L. on multiple occasions. The petition was authorized on June 17, 2010, and on July 8, 2010, the trial court took jurisdiction over the children after the mother, who was also a respondent to the petition, admitted to several of the allegations in the petition. Respondent stood mute. On March 25, 2011, following a hearing, respondent's parental rights to the minor child were terminated.

On appeal, respondent first contends that the trial court erred by accepting the admissions from the child's mother because the allegations and the admissions were insufficient to meet the statutory requirements for jurisdiction. Respondent also maintains that the factual basis for the plea was not established because the evidence presented was hearsay.[1]

[1] Generally, matters affecting the trial court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights as respondent has done in this appeal. *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008); MCR 3.993(A). However, the facts of this case require examination of respondent's jurisdictional challenge despite his failure to appeal from the trial court's order taking jurisdiction over the children. In the trial court's July 13, 2010 order taking jurisdiction, the trial court explicitly stated that if petitioner moved to terminate respondent's

We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made." *In re Hill*, 221 Mich App 683, 692; 562 NW2d 254 (1997). "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *In re BZ*, 264 Mich App at 295. "Jurisdiction must be established by a preponderance of the evidence." *Id*.

The authority and jurisdiction of the family division of the circuit court is set forth in MCL 712A.2. In pertinent part subsections 2(b)(1) and (2) provide:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .
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> * * *
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> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The mother admitted that she resided with respondent and their biological minor child as well as her biological minor child, D.L., until April 30, 2010. She admitted that D.L. informed her that respondent inappropriately touched her and that during a medical examination of D.L., D.L. told the medical staff that she was touched and penetrated by respondent on more than one occasion. The child's mother also pleaded no contest to paragraphs 12 and 13 in the petition, which alleged:

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parental rights, due process entitled respondent to a separate trial regarding jurisdiction. However, a motion for reconsideration was filed, and in a November 9, 2010 order the trial court vacated the part of the July 13, 2010 order that granted respondent a separate trial regarding jurisdiction. In the hearing regarding the motion for reconsideration, respondent's attorney specifically requested appellate counsel be appointed for respondent to appeal the trial court's jurisdictional decision, and the trial court indicated counsel would be provided. However, in its written order the trial court specifically stated that respondent's right to appeal the trial court's jurisdictional decision was "preserved" and appellate counsel would not be appointed until the termination proceedings were completed. Accordingly, we find that due process requires us to consider respondent's jurisdictional challenge because the trial court erroneously informed respondent his right to appeal the jurisdictional ruling would not be affected by any failure to appeal the decision before the termination proceedings were completed.

> 12. [Respondent] has a criminal history involving . . . misdemeanor disorderly person/obscene conduct for which he pled guilty on 9/9/02 — this stemmed from a misdemeanor sex offense charge during which [respondent] was reported to be masturbating in the view of an adult female and [D.L.].
>
> 13. [The mother] was aware of the disorderly person/obscene conduct case in 2002 and did not obtain a copy of the police report or further pursue the matter to determine if her child was safe in [respondent's] presence.

After the mother's plea, the trial court took judicial notice of the fact that respondent pleaded guilty to second-degree criminal sexual conduct involving the penetration of D.L. The trial court found that the facts admitted by the mother "sufficiently establish[ed] that respondent mother knew of [respondent's] prior sexual misconduct which occurred in her daughter's presence and that she failed to further investigate and/or protect [D.L.] from him." The trial court went on to conclude that it could "reasonably infer from these admissions that mother had reason to fear for [D.L.'s] safety in [respondent's] unsupervised presence. As a foreseeable result of mother's neglect to supervise or take reasonable precautions, [respondent] perpetrated sexual abuse upon [D.L.]." Accordingly, the trial court found that "one or more of the statutory grounds alleged in the petition are true."

On the basis of these facts, we find that the trial court did not clearly err when it concluded that the mother's plea was sufficient to establish jurisdiction over the children. The mother admitted that she knew about respondent's criminal history, including his guilty plea to a misdemeanor sex offense committed in the presence of her daughter, yet she took no steps to find out if respondent posed a risk of harm to the young girl. By not doing so, the mother created a home environment that was unfit for her daughter to live in because of criminality and depravity on the part of respondent. The mother's inaction likely contributed to the daughter eventually being sexually abused by respondent. Further, the mother's failure to take any action to ensure the safety of her children created a substantial risk of harm to the mental well-being of her children. See *In re SLH*, 277 Mich App 662, 670; 747 NW2d 547 (2008) (finding that the failure of one parent to protect a child from abuse from another person can be grounds for taking jurisdiction over the child); *In re MU*, 264 Mich App 270, 279-280; 690 NW2d 495 (2004) (trial court properly exercised jurisdiction over the children because the finding that the father engaged in criminal behavior, murder, rendered the home or environment unfit).

This Court has held that as long as the allegations against the parent who entered the plea indicate that the parent "committed an act or omission that would bring the children within the jurisdiction of the court" under MCL 712A.2, *In re SLH*, 277 Mich App at 670, "[t]he court need not separately ascertain whether it has jurisdiction over each parent." *In re LE*, 278 Mich App 1, 17; 747 NW2d 883 (2008).[2]

[2] On appeal, respondent argues that the instant case is analogous to *In re SLH*, 277 Mich App at 669-670, where this Court held that the trial court erred when it took jurisdiction over the minor children based on the mother's plea. However, in *In re SLH*, this Court held the trial court erred

We also find no error in the trial court's finding that D.L.'s hearsay statements as related by the caseworker under oath, in combination with the police report documenting respondent's past sexual misconduct, constituted sufficient "other means" under MCR 3.971(C)(2)[3] to support the statutory grounds alleged in the petition. Accordingly, we find that the trial court's exercise of jurisdiction over the children did not constitute clear error.

Next, respondent contends that the trial court clearly erred in finding that termination of his parental rights was in the child's best interests. Specifically, respondent challenges the trial court's determinations regarding factors (b), (c), (d), (e), (h), and (i).[4] Respondent maintains that

because the mother who entered the plea was not a respondent, and no allegations were made against her personally; therefore, the mother did not admit any wrongdoing. *Id.* at 670-671. This Court held that only a respondent may enter a plea to form the basis for the trial court to take jurisdiction over the children. *Id.* at 670. In this case, the mother was a respondent, and admitted to wrongdoing on her part; therefore, *In re SLH* does not support respondent's position that the mother's plea could not properly form the basis for the trial court's jurisdiction over the children in this case.

[3] MCR 3.971(C)(2) provides:

> The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

[4] The factors respondent references are the best interests factors set forth in the Child Custody Act. The trial court determined whether termination was in the child's best interests by examining the best interests factors set forth in the Child Custody Act, MCL 722.23, which provides:

> As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
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> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
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> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

he appropriately provided his son with love, affection, and day-to-day guidance, that he is capable of supporting the family through work in various labor positions, that there is no reason to believe supervised visitation would not be effective, that the evidence demonstrated he was the primary caregiver to the children, and that the minor child's preference should have been considered despite the child's young age.

We review the trial court's decision regarding whether termination is in a child's best interests for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

The trial court noted that the Juvenile Code does not set forth specific best interests factors, and it utilized the best interests factors set forth in the Child Custody Act, MCL 722.23. On appeal, respondent does not challenge the trial court's analysis using the best interests factors set forth in the Child Custody Act. We note that while trial courts are not required to make findings with regard to the best interests factors set forth in the Child Custody Act during a termination of parental rights proceeding, "it is entirely appropriate for a probate court to consider many of the concerns underlying those best interests factors in deciding whether to terminate parental rights." *In re JS and SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). Trial courts may "refer directly to pertinent best interests factors in the Child Custody Act in making a determination concerning whether a parent has established that termination of parental rights is clearly not in a child's best interests." *Id.* at 103.

Upon review of the record, we find that the trial court did not clearly err when it determined that termination was in the best interests of the minor child. While we find that the trial court inappropriately relied on speculation instead of evidence when making its

> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
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> (f) The moral fitness of the parties involved.
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> (g) The mental and physical health of the parties involved.
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> (h) The home, school, and community record of the child.
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> (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
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> (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
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> (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
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> (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

determination in regard to factors (c) and (e),[5] we do not find that these errors constitute clear error requiring reversal because the consideration of each factor from the Child Custody Act is not required in a termination proceeding, and when viewed in its entirety, the evidence supports the trial court's conclusion that termination of respondent's parental rights was in the best interests of the child. See *Mann v Mann*, 190 Mich App 526, 537-538; 476 NW2d 439 (1991) (finding error on the best interests factors does not require reversal when the remaining factors and ultimate finding is supported by the record and law).

The majority of the evidence supports the trial court's determination that termination of respondent's parental rights was in the child's best interests. This Court has long recognized that abuse of one child is probative of a parent's proclivity to abuse other children. See *In re Parshall*, 159 Mich App 683, 689; 406 NW2d 913 (1987), *In re Youmans*, 156 Mich App 679, 689; 401 NW2d 905 (1986), *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). The evidence presented at trial clearly demonstrated that respondent committed heinous acts against another child living in his home. Further, we find the fact that respondent refused to acknowledge any wrongdoing, and continued to argue that he was innocent of both convictions, demonstrated that the child would be at risk in respondent's care. On the record before us, we hold that the court did not clearly err in finding clear and convincing evidence to support termination of respondent's parental rights.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello

[5] In evaluating factor (c), the trial court assumed that because respondent previously worked as a certified nurse's aide and would not be able to maintain that position as a convicted sex offender respondent would not be able to provide food, clothing, and medical care to his child. The trial court also relied on its belief that long-term supervised visitation would be impractical in determining that factor (e), the permanence, as a family unit, of the custodial home weighed in favor of termination.